

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 6, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1043

Cir. Ct. No. 2013SC78

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

REBECCA ANN REED AND KENNETH OSWALD HEIMAN,

PLAINTIFFS-RESPONDENTS,

V.

JAMES ROSSA, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County:
DANIEL W. KLOSSNER, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ James Rossa, pro se, appeals a money judgment of the circuit court in favor of Kenneth Heiman and Rebecca Reed, Rosa's former tenants. I affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶2 Heiman and Reed, former tenants of Rossa, brought a replevin action against Rossa in small claims court alleging that Rossa was in possession of certain property belonging to them. Rossa contested the action, claiming that he had disposed of Heiman's and Reed's property lawfully pursuant to WIS. STAT. ch. 704. Rossa also counterclaimed for unpaid rent and utilities. The matter was tried before the circuit court, which entered judgment in favor of Rossa in the amount of \$888.00 and judgment in favor of Heiman and Reed in the amount of \$3,000. Rossa appeals the judgment in favor of Heiman and Reed.

¶3 Rossa contends the court erred in entering judgment in favor of Heiman and Reed because the court failed to determine whether he had disposed of Heiman's and Reed's property lawfully. Rossa relies on WIS. STAT. § 704.05(5),² which provides that "[i]f a tenant removes from the premises and leaves personal property, the landlord may presume, in the absence of a written agreement between the landlord and the tenant to the contrary, that the tenant has abandoned the personal property and may, subject to par. (am), dispose of the abandoned personal property in any manner that the landlord, in its sole discretion, determines is appropriate." Subsection (am) is an exception for prescription medication and equipment.

¶4 It is the burden of the appellant to ensure a complete record is before this court on appeal, *see State v. Marks*, 2010 WI App 172, ¶20, 330 Wis. 2d 693, 794 N.W.2d 547, and this court is required, as a matter of law, to assume that any missing portion of the record supports the lower court's ruling. *See Fiumefreddo*

² On appeal, Rossa relies on a version of WIS. STAT. § 704.05(5)(a) that was amended prior to Heiman and Reed's departure from Rossa's property. *See* 2011 Wis. Act 143, § 8. The current version of § 704.05(5)(a) took effect March 31, 2012.

v. McLean, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993). Rossa did not provide this court with a transcript of the trial. Without a transcript of the trial, this court cannot review that evidence upon which the circuit court based its decision. The parties might have testified regarding the circumstances surrounding Heiman's and Reed's personal property, including any written agreements the parties may have had regarding that property, and presented arguments supporting their claims. The circuit court could have made credibility determinations about any testimony and given weight to each item of evidence, matters within the exclusive province of the circuit court. *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). And ultimately, the circuit court would have rendered a decision based upon its application of the facts that it found to the relevant law.

¶5 Because Rossa has provided this court with no basis in the record from which I could determine whether the circuit court erred, I must reject Rossa's argument. Accordingly, I affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

